IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of: SARAH KITTELSON, Respondent/Cross Appellant, v. RICHARD KITTELSON, Appellant.	No. 32915-8-II UNPUBLISHED OPINION

PENOYAR, J. — Richard Kittelson appeals the trial court's distribution of property following his marriage dissolution. He also argues that the trial court erred in issuing an ex parte restraining order against him and that the trial court lacked jurisdiction over the dissolution proceedings. We affirm.

FACTS

Sarah and Richard Kittelson married in July 1987, had two children during their marriage, and separated in May 2002. On May 20, 2002, Sarah[1] filed for dissolution of marriage. The next day, Sarah filed a motion for a temporary restraining order against Richard, explaining that Richard "suffers from serious personal problems." CP at 271. She stated that he is extremely

[1] We use the Kittelsons' first names in this opinion to avoid confusion. We mean no disrespect.

obsessive and compulsive, engages in ritualistic behaviors, and suffers from depressive episodes in which he becomes almost catatonic. She explained that Richard's behavior seriously impacted the marriage and the mental health of their daughter. Shortly before Sarah and Richard separated, their daughter attempted to commit suicide.

On May 21, the trial court entered an ex parte restraining order against Richard restraining him from contacting Sarah or the children, and from going onto the grounds of or entering the home. On June 5 and 20, the parties entered stipulated temporary orders continuing the restraining order. On July 26, the court issued a year long restraining order against the parties restraining each from going onto the grounds of or entering the home or work place of the other party. The order expired on July 26, 2003.

The Kittelson dissolution was final on December 28, 2004. The parties entered into a permanent parenting plan providing that their daughter reside with Sarah and their son reside with Richard, with alternating weekends spent with the other parent. The trial court found that Sarah's income was $2,378 a month and that Richard's income was $3,300 a month and ordered Richard to pay Sarah $390.31 a month in spousal maintenance to equalize their incomes. The trial court explained that the equalizing payment was $461.00 a month less $70.69 a month, representing one-half of the $141.39 a month that Richard pays for the children's medical insurance.

The trial court then distributed the community property between Sarah and Richard equally. Sarah received a final distribution valued at $183, 959. She paid Richard $6,725 to reduce her distribution so they each received a final distribution valued at $177,234. The trial court found the property distribution to be fair and equitable. It considered that Richard contributed a portion of his separate property to the marital community and stated that, even if the court were to find that the "Coast Pine Street

duplex" or proceeds were Richard's separate property, it would still make the same division of property. CP at 244. The trial court also considered Sarah's inheritance in making its distribution. Richard now appeals.

ANALYSIS

I. The Temporary Restraining Order

Richard argues that the trial court erred in granting "a groundless ex parte [sic] restraining order against him which forcibly separated him from his children and home, without due process." Appellant's Brief at 1. He argues that the restraining order effectively reduced him to visitation rights with his children in the two and one-half years between the issuance of the restraining order and the entry of a permanent parenting plan.

Sarah explains that the restraining orders restrained Richard from disposing of assets, removing the children from the state, changing insurance policies, and entering the Kittelson's home. She explains that Richard stipulated to temporary restraining orders on June 5 and on June 20. Further, she explains that Richard did not move for judicial review of the order or file a motion to modify the temporary orders and that Richard only assigned error to the 14 day ex parte restraining order issued on May 21, 2002.

The court has the power to grant restraining orders as necessary. *Trowbridge v. Trowbridge*, 26 Wn.2d 181, 173 P.2d 173 (1946). Under RCW 26.09.060:

> in a proceeding for dissolution of marriage . . . either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from: (a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued; (b) Molesting or disturbing the peace of the other party or of any child; (c) Going onto the

> grounds of or entering the home, workplace, or school of the other party or the day care or school of any child upon a showing of the necessity therefor; (d) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and (e) Removing a child from the jurisdiction of the court. . .
> Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time. . .
> The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

Although Richard cites numerous cases in his brief, it is not clear how they support his argument. He cites no Washington law dealing with ex parte restraining orders. Without argument or authority to support it, an assignment of error is waived. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). This court need not consider arguments that are not developed in the briefs and for which a party has not cited authority. *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990); RAP 10.3(a)(5). We decline to consider Richard's argument regarding the ex parte restraining order because it is unsupported by argument or citation and lacks merit.

The trial court's issuance of an ex parte temporary restraining order was not error. There was substantial evidence supporting the order because the trial court adopted paragraphs 2.1, 2.2, 2.4 of the motion/declaration for an ex parte restraining order as its findings. These findings state that Richard is obsessive, depressed, compulsive, and engages in ritualistic behaviors. Furthermore, Richard stipulated to two other restraining orders with similar terms to the ex parte order and the issue is likely moot. Generally, courts will not review a moot issue which the court may no longer provide effective relief. *State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105

(1995).

Richard did not sufficiently brief his constitutional arguments. Generally parties that raise constitutional issues must present considered arguments to this court and naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion. *In re the Matter of Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). We will not review issues which are inadequately argued or briefed or which have been given only passing treatment. *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) (citing *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)). Because Richard's constitutional arguments were not adequately briefed, we decline review.

II. The Property Distribution

Richard makes numerous arguments that the trial court erred in its property distribution. Specifically, he argues that:

> (1) the court miscalculated the amount of equity in the Kittelsons' home;
> (2) an insurance check in the amount of $811 was separate, not community, property;
> (3) a bank account totaling $41,330 was intended for the Kittelsons' children's education and not community property;
> (4) the trial court should not have considered Richard's sick leave benefits, valued at $28,207, as an asset;
> (5) the trial court should have considered Sarah's Social Security Benefits to be community property;
> (6) Richard should not have been required to pay 50 percent of Sarah's survivor benefits under his retirement plan;
> (7) the Coast Pine property was separate property;
> (8) the appraisals of Richard and Sarah's personal property were not valid and that a boat valued at $5,280 and a tent trailer valued at $2,500 should be removed from his assets.

We dismiss all of Richard's arguments. A pro se appellant must comply with all procedural rules and the failure to do so will preclude review of the asserted claim. *State v. Smith*, 104 Wn.2d 497, 508, 707 P.2d 1306 (1985). Under RAP 10.3(a)(5), an appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record. Richard does not properly cite to Washington law or other authority in support of his arguments in relation to the property division.

Furthermore, Washington cases repeatedly underscore that property division at dissolution is within the trial court's broad discretion. *In re the Marriage of Wright*, 147 Wn.2d 184, 196, 52 P.3d 512 (2002). *See* RCW 26.09.080. Flexibility is especially important in allocating the community interest in a retirement plan. *Wright*, 147 Wn.2d at 196. In dividing property in a dissolution proceeding, the court shall make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

> (1) The nature and extent of the community property;
> (2) The nature and extent of the separate property;
> (3) The duration of the marriage; and
> (4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.

*In re the Marriage of Mathews***,** 70 Wn. App. 116, 121, 853 P.2d 462 (1993) (citing RCW 26.09.080).

The paramount concern is the economic condition in which the decree will leave the parties. *In re the Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989) (citing *In re the Marriage of Dessauer*, 97 Wn.2d 831, 839, 650 P.2d 1099 (1982), *overruled on other grounds In re the Marriage of Smith*, 100 Wn.2d 319, 669 P.2d 448 (1983)). The trial court considers the parties' relative health, age, education and employability. *In re the Marriage of Dessauer*, 97 Wn.2d at 839. "The key to an equitable distribution of property is not mathematical preciseness, but fairness." *In re the Marriage of Clark*, 13 Wn. App. 805, 810, 538 P.2d 145. There is no evidence that the trial court acted outside its broad discretion in its property distribution.

Property is presumed to be community property if acquired during marriage. *In re the Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003) (citing RCW 26.16.030). Separate property is pre-marital property and/or property acquired after marriage by gift, bequest, devise, or descent. *Chumbley*, 150 Wn.2d at 5 (*citing* RCW 26.16.010, .020). As long as still identifiable and traceable to its separate property source, "separate property retains its separate character unless changed by deed, agreement of the parties, operation of law, or some other direct and positive evidence to the contrary." *In re the Marriage of Sharbek,* 100 Wn. App. 444, 447, 997 P.2d 447 (2000) (citing *In re the Estate of Witte*, 21 Wn.2d 112, 125, 150 P.2d 595 (1944)). The burden of proving a change in character from separate to community or from community to separate is on the party asserting such change. *Sharbek,* 100 Wn. App. at 448 (citing *In re the Estate of Binge*, 5 Wn.2d 446, 105 P.2d 689 (1940)). The name the property is held in does not determinate its character. *Sharbek,* 100 Wn. App. at 448 (citing *In re the Marriage of Hurd*, 69 Wn. App. 38, 51, 848 P.2d 185 (1993)).

The trial court can divide all separate

and community property amongst the parties in a dissolution action, it need not divide community property equally, and it need not award separate property to its owner. *In re the Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (quoting RCW 26.09.080). According to RCW 26.09.080, the court need only "make such dispositions of the property . . . either community or separate, as shall appear just and equitable after considering all relevant factors[.]" The character of property is but one factor the court considers in distributing assets in a dissolution, it is not controlling. *In re the Marriage of Konzen*, 103 Wn.2d 470, 478, 478 P.3d 481 (2001) (quoting RCW 26.09.080).

Mischaracterization of property is not a fatal error. When property is mischaracterized the remand is appropriate "where (1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it the same way." *Eg., In re the Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P.2d 8 (1989) (remand appropriate when the court explicitly states characterization was important factor in its property division).

In this case, the trial court distributed the property equally between the parties and considered Sarah's inheritance, Richard's contributions to the real estate purchases, and Richard's salary. We find no error in the trial court's distribution.

III. Attorney Fees

Richard next argues that the trial court erred by not awarding him attorney fees, child custody evaluation fees, and appraisal fees.

Under RCW 26.09.140, a trial court may award attorney fees after considering the financial resources of both parties. In making an award under this section, the court must balance the needs of the one party against the other

party's ability to pay. *In re the Marriage of Nelson*, 62 Wn. App. 515, 521, 814 P.2d 1208 (1991). The award is discretionary, and we will not reverse a decision governing an award absent an abuse of discretion. *Nelson*, 62 Wn. App. at 521.

We find no abuse of discretion in the trial court's finding that each party to the dissolution had sufficient funds to pay his or her attorney fees.

IV. Sarah's Cross Appeal -- Miscalculation of Net Income

In a cross appeal, Sarah argues that the trial court erred in calculating her net income and awarded her $597 in maintenance less than necessary to fulfill its intent of equalizing the parties' net income for two years. Sarah also argues that the trial court erred in not completing the child support worksheets showing its income calculation.

Richard responds that the trial court did not err in its calculation of spousal maintenance, arguing that the trial court did not abuse its discretion and that the trial court's stated intent of "equalizing the incomes" of Richard and Sarah does not necessarily mean the incomes would be mathematically equal. Reply Br. of Appellant at 20.

This court finds no error in the trial court's determination of spousal maintenance given the appropriate standard of review applied to spousal maintenance determinations. "In making an equitable property division or awarding maintenance, the trial court exercises broad discretionary powers. Its disposition will not be overturned on appeal absent a showing of manifest abuse of discretion." *In re the Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).

This court affirms the trial court on all grounds.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Houghton, P.J.

Armstrong, J.